

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON AT SEATTLE

BRANDON PLANK,

Plaintiff,

vs.

PHILLIPS & COHEN ASSOCIATES, LTD.,

Defendant.

NO. CV09-0053 JPD

ANSWER AND AFFIRMATIVE DEFENSES
OF DEFENDANT PHILLIPS & COHEN
ASSOCIATES, LTD.

COMES NOW the Defendant PHILLIPS & COHEN ASSOCIATES, LTD. ("Phillips & Cohen"), by and through its counsel of record, Richard L. Martens and Steven A. Stolle of Martens + Associates | P.S., and in answer to the plaintiff's Complaint, admits, denies, and alleges as follows.

NATURE OF ACTION

I.

In answer to Paragraph 1 of the Complaint, this paragraph is in the form of an introduction or unilateral self-characterization of the complaint which does not require an answer. To the extent this paragraph requires an answer, this answering defendant admits on information and belief that plaintiff is

1 an individual consumer. Except as so explicitly admitted, this answering defendant has insufficient
2 knowledge at this time upon which to form a belief as to the truth and veracity of the allegations, if any,
3 contained therein, and therefore denies the same.

4 JURISDICTION

5 II.

6 In answer to Paragraph 2 of the Complaint, to the extent that plaintiff is able to state a *prima*
7 *facie* claim for violation of 15 U.S.C. § 1692 *et seq.*, this answering defendant admits that subject matter
8 jurisdiction is proper under 15 U.S.C. § 1692k(d).

9 THE PARTIES

10 III.

11 In answer to Paragraph 3 of the Complaint, on information and belief, this answering defendant
12 admits that the plaintiff resides in Seattle, King County, Washington.

13 IV.

14 In answer to Paragraph 4 of the Complaint, this answering defendant, on information and belief,
15 admits the allegations therein.

16 V.

17 In answer to Paragraph 5 of the Complaint, this answering defendant admits that Phillips &
18 Cohen Associates, Ltd., is engaged in business of attempting to collect overdue debts, including a debt
19 owed by plaintiff. Except as so expressly admitted, this answering defendant has insufficient knowledge
20 at this time upon which to form a belief as to the truth and veracity of the allegations contained therein,
21 and therefore denies the same putting plaintiff to his proof.

22 VI.

23 In answer to Paragraph 6 of the Complaint, this answering defendant admits that it meets the
24 definition of “debt collector” under 15 U.S.C. § 1692a(6) and is a “licensee” as defined by RCW

1 19.16.100(9).

2 **ALLEGED FACTS**

3 **VII.**

4 In answer to Paragraph 7 of the Complaint, this answering defendant admits that it contacted
 5 plaintiff on one or more occasions concerning the debt due and owing by plaintiff. Except as so
 6 expressly admitted, this answering defendant has insufficient knowledge at this time upon which to form
 7 a belief as to the truth and veracity of the allegations contained therein, and therefore denies the same,
 8 putting plaintiff to his proof.

9 **VIII.**

10 In answer to Paragraph 8 of the Complaint, this answering defendant denies the first sentence of
 11 this Paragraph, thereby putting plaintiff to his proof. This answering defendant has insufficient
 12 knowledge at this time upon which to form a belief as to the truth and veracity of the allegations
 13 contained in the second sentence of Paragraph 8, and therefore denies the same, putting plaintiff to his
 14 proof.

15 **IX.**

16 In answer to Paragraph 9 of the Complaint, this answering defendant has insufficient knowledge
 17 at this time upon which to form a belief as to the truth and veracity of the allegations contained therein,
 18 and therefore denies the same, putting plaintiff to his proof.

19 **ALLEGED CAUSES OF ACTION**

20 **A. Plaintiff's First Claim For Relief – Violations of 15 U.S.C. § 1692**

21 **X.**

22 In answer to Paragraph 10 of the Complaint, this answering defendant incorporates by reference
 23 as though fully set forth herein each of the answers to the preceding Paragraphs of the Complaint. By
 24 way of further answer to plaintiff's prayer for relief, this answering defendant denies that plaintiff is

entitled to any of his requested relief whatsoever.

B. Plaintiff's Second Claim for Relief – Violations of RCW 19.16 et seq. and RCW 19.86 et seq.

XI.

In answer to Paragraph 11 of the Complaint, this answering defendant incorporates by reference as though fully set forth herein each of the answers to the preceding Paragraphs of the Complaint. By way of further answer to plaintiff's prayer for relief, this answering defendant denies that plaintiff is entitled to any of his requested relief whatsoever.

C. Plaintiff's Third Claim for Relief – Common Law Invasion of Privacy by Intrusion.

XII.

In answer to Paragraph 12 of the Complaint, this answering defendant incorporates by reference as though fully set forth herein each of the answers to the preceding Paragraphs of the Complaint. By way of further answer to plaintiff's prayer for relief, this answering defendant denies that plaintiff is entitled to any of his requested relief whatsoever.

AFFIRMATIVE DEFENSES

By way of further answer and for affirmative defenses, Phillips & Cohen Associates, Ltd., alleges as follows:

FIRST AFFIRMATIVE DEFENSE

That plaintiff's Complaint fails to state a claim or cause of action upon which relief can be granted against Phillips & Cohen Associates, Ltd., on one or more of plaintiff's causes of action.

SECOND AFFIRMATIVE DEFENSE

That plaintiff's claims and causes of action against Phillips & Cohen Associates, Ltd., are barred by the doctrines of waiver and/or estoppel.

THIRD AFFIRMATIVE DEFENSE

That service and/or service of process on Phillips & Cohen Associates, Ltd., was defective and

invalid.

FOURTH AFFIRMATIVE DEFENSE

That this Court lacks personal jurisdiction over Phillips & Cohen Associates, Ltd.

FIFTH AFFIRMATIVE DEFENSE

That some or all of plaintiff's claims are barred by the applicable statutes of limitations.

SIXTH AFFIRMATIVE DEFENSE

That, in the event that Phillips & Cohen Associates, Ltd., is found to have violated any provision of 15 U.S.C. § 1692, which is denied, such violation was unintentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error, precluding liability by application of 15 U.S.C. § 1692k(c).

RESERVATION OF RIGHTS

Phillips & Cohen Associates, Ltd., hereby reserves the right to allege additional facts and circumstances and additional affirmative defenses, counter-claims, cross-claims, and third-party claims based on information revealed during the discovery process or at trial.

PRAYER FOR RELIEF

WHEREFORE, having fully answered plaintiff's Complaint and having filed affirmative defenses thereto, Phillips & Cohen Associates, Ltd., prays for relief as follows:

1. That plaintiff's Complaint be dismissed with prejudice and that plaintiff take nothing thereby;
2. That this answering defendant have and recover its taxable costs and expenses herein, including an award of attorneys' fees against the plaintiff;
3. That this answering defendant be granted leave to amend its pleadings to conform to the evidence introduced at trial or produced during the discovery process; and
4. For such other and further relief as the Court deems just and equitable.

1 DATED this 25th day of February, 2009.

2 **Martens + Associates | P.S.**

3
4 By /s/ Richard L. Martens
5 Richard L. Martens, WSBA #4737
6 Steven A. Stolle, WSBA #30807
7 Of Attorneys for Defendant
8 Phillips & Cohen Associates, Ltd.
9 705 Fifth Avenue South, Ste. 150
10 Seattle, Washington 98104
11 Tel: (206) 709-2999
12 Fax: (206) 709-2722
13 Email: rmartens@martenslegal.com
14
15
16
17
18
19
20
21
22
23
24

CERTIFICATE OF SERVICE

I, Leehwa McFadden, certify under penalty of perjury under the laws of the State of Washington, that on February 25, 2009, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the person listed below:

Jon N. Robbins
Weisberg & Meyers, LLC
3877 N. Deer Lake Rd.
Loon Lake, Washington 99148
E-mail: jrobbins@AttorneysForConsumers.com

DATED at Seattle, Washington, this 25th day of February, 2009.

By /s/ Leehwa McFadden
Leehwa McFadden
Tel: (206) 709-2999
Fax: (206) 709-2722
Email: lkim@martenslegal.com